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case.

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**IN THE
COURT OF APPEALS OF INDIANA**

SUSAN JOHNSON,)	
)	
Appellant-Defendant,)	
)	
vs.)	No. 48A02-0601-CR-72
)	
STATE OF INDIANA,)	
)	
Appellee-Plaintiff.)	

APPEAL FROM THE MADISON SUPERIOR COURT
The Honorable Thomas Newman, Jr., Judge
Cause No. 48D03-0403-FA-144
48D03-0404-FB-213

August 31, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

Susan Johnson appeals the reinstatement of part of her suspended sentence following her violation of probation. We affirm.

Issue

The sole issue is whether the trial court abused its discretion in ordering Johnson to serve part of the suspended portion of her sentence.

Facts

The facts most favorable to the trial court's ruling reveal that in August of 2004, in Madison County, Susan Johnson pled guilty to dealing in cocaine, a Class A felony, dealing in cocaine, a Class B felony, possession of marijuana, a Class A misdemeanor, and maintaining a common nuisance, a Class D felony. On June 27, 2005, Johnson received an aggregate twenty-year suspended sentence. Johnson was placed on probation for ten years provided that she pay court costs, abide by the conditions of probation, participate and successfully complete the RIGHT program, pay two hundred fifty dollars restitution to Madison County Drug Task Force, and pay a two hundred dollar drug interdiction fee.

On September 29, 2005, a notice of probation violation was filed against Johnson, which alleged that she:

- a) Failed to abstain from the use of alcoholic beverages/illicit drugs during the period of probation: On/about 08/18/05 and again on 9/12/05, [she] submitted urine specimen to the Community Justice Center RIGHT Program, which tested positive for the presence of cocaine;

- b) Failed to successfully complete the Community Justice Center RIGHT Program;
- c) Failed to maintain employment and/or verify employment to the Probation Department;
- d) Failed to pay Administrative fee of \$100;
- e) Failed to pay probation fees;
- f) Failed to pay court cost in amount of \$136;
- g) Failed to pay \$200 Drug Interdiction Fee;
- h) Failed to pay restitution;
- i) Not to violate the laws of Indiana or the U.S. and failure to behave well in society: On/about 11/24/05, [she was] alleged to have committed the following new criminal offenses: Bribery, Class C felony; and Resisting Law Enforcement, Class D felony

Appellant's App. p. 47.

On December 5, 2005, an evidentiary hearing was held, and Johnson admitted that she had failed two urine tests for cocaine, had not completed the RIGHT program, had not maintained employment, and failed to pay the fees ordered by the court. Johnson was found to have violated the conditions of her probation and ordered to serve part of the suspended portion of her sentence, fifteen years at the Department of Correction. She now appeals.

Analysis

Johnson argues that the trial court abused its discretion in ordering her to serve fifteen years of her previously suspended sentence. This being her first violation of probation, Johnson contends the trial court erred by not considering alternatives to

incarceration.¹ Probation is a matter of grace and a conditional liberty that is a favor, not a right. Jones v. State, 789 N.E.2d 1008, 1010 (Ind. Ct. App. 2003) trans. denied. Although probation and community corrections programs serve as alternatives to commitment to the Department of Correction, consideration and imposition of such alternatives is left to the discretion of the trial court. Wolf v. State, 793 N.E.2d 328, 330 (Ind. Ct. App. 2003). The trial court has broad discretion in imposing conditions of probation in order to create law-abiding citizens and to protect the community with the only limitation being that the conditions have a reasonable relationship to the treatment of the accused and the protection of the public. Jones, 789 N.E.2d at 1010.

We review a trial court's sentencing decision in a probation revocation proceeding for an abuse of discretion. Jones v. State, 838 N.E.2d 1146, 1148 (Ind. Ct. App. 2005) trans. denied. An abuse of discretion occurs if the trial court's decision is against the logic and effect of the facts and circumstances before the court. Pugh v. State, 804 N.E.2d 202, 203 (Ind. Ct. App. 2004). A defendant may not, however, collaterally attack a sentence on appeal from a probation revocation. Jones, 838 N.E.2d at 1148.

Here, Johnson was convicted of Class A and Class B felonies, but this being Johnson's first felony conviction, the trial court ordered her to serve ten years probation and no incarceration. Johnson testified at her sentencing hearing that she would do anything the court ordered her to do because she did not want to return to jail. Thus, as conditions of her probation, Johnson was to adhere to probation rules, participate and

¹ Johnson requested home detention and daily reporting as alternatives to incarceration. See Tr. p. 68.

successfully complete the RIGHT program, pay two hundred fifty dollars to Madison County Drug Task Force, and pay a two hundred dollar Drug Interdiction fee, among other fees. Only three months after being ordered to probation, a violation of probation notice was filed against Johnson indicating that she failed to comply with all of the court's orders. The violation of a single condition of probation is sufficient to permit a trial court to revoke probation and order incarceration. Rosa v. State, 832 N.E.2d 1119, 1121 (Ind. Ct. App. 2005).

Indiana Code Section 35-38-2-3 (g) provides:

If the court finds that the person has violated a condition at any time before termination of the period, and the petition to revoke is filed within the probationary period, the court may:

- (1) continue the person on probation, with or without modifying or enlarging the conditions;
- (2) extend the person's probationary period for not more than one (1) year beyond the original probationary period; or
- (3) order execution of all or part of the sentence that was suspended at the time of initial sentencing.

In this case, the court reinstated fifteen-years of Johnson's twenty-year suspended sentence because she failed to pay the court-ordered fees and failed to comply with the conditions of her probation. Her use of cocaine is especially troubling, given the nature of her convictions. We conclude that the trial court did not abuse its discretion in ordering execution of fifteen-years of the sentence.

Conclusion

We conclude that the trial court did not abuse its discretion in ordering execution of Johnson's fifteen year suspended sentence. We affirm.

Affirmed.

ROBB, J., concurs.

SULLIVAN, J., concurs in result.